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BOARD OF PERSONNEL APPEALS

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF MONTANA, IN AND FOR THE COUNTY OF LEWIS & CLARK

Cause No. 43348

DEER LODGE EDUCATION ASSOCIATION)
affiliated with MONTANA EDUCATION)
ASSOCIATION,)

Petitioner)

vs.)

OPINION AND ORDER

STATE OF MONTANA ex rel BOARD OF)
PERSONNEL APPEALS and BOARD OF)
TRUSTEES, POWELL COUNTY SCHOOL)
DISTRICT NO. 1,)

Respondents.)

This matter came for hearing before this Court on a Petition
for Judicial Review filed by Petitioner seeking review of an
Order issued by Respondent Board of Personnel Appeals on December
20, 1978.

The facts leading up to the filing of the Petition for
Judicial Review show that a labor dispute arose between the
Petitioner and Respondent Board of Trustees, Powell County School
District No. 1 (School District). Both the Petitioner and the
School District filed unfair labor practices with Respondent
Board of Personnel Appeals (Board). After the filing of the
charges, the Petitioner and the School District reached an agree-
ment which culminated into a contract. The Board dismissed two
of the four counts of Petitioner's charge as being moot.

Petitioner alleges that it is aggrieved by the order because
"both charges should have been dismissed in their entirety on the
ground of mootness" or in the alternative "none of the charges
should have been dismissed, and regardless of mootness, the
Respondent Board should proceed to hold a hearing and reach a
decision on both of them." The Petition for Judicial Review
raises two main issues: (1) Does the Board of Personnel Appeals
have discretion to hear an unfair labor practice charge alleging
failure to bargain in good faith after the parties involved have

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MARY G. HARRIS

1 reached agreement and entered into a contract; (2) if so, has the
2 Board exercised that discretion properly in this matter.

3 As to the first issue, the statute conferring jurisdiction
4 on the Board to hear, decide and remedy unfair labor practice
5 charges is section 39-31-406, MCA. Subsection (4) of that statute
6 provides:

7 "(4) If, upon the preponderance of the testimony taken, the
8 board is of the opinion that any person named in the com-
9 plaint has engaged in or is engaging in an unfair labor
10 practice, it shall state its findings of fact and shall
11 issue and cause to be served on the person an order requiring
12 him to cease and desist from the unfair and to take such
13 affirmative action, . . . as will effectuate the policies
14 of this chapter." (emphasis added)

15 The above-quoted statute clearly provides that the Board has
16 the authority to consider not only charges alleging that a party
17 is engaging in an unfair labor practice, but also that a party
18 has engaged in an unfair labor practice. The Board is also given
19 considerable remedial powers after finding that a party has
20 engaged or is engaging in an unfair labor practice. It appears,
21 therefore, that the Board has the discretion to hear unfair labor
22 practice charges even if the alleged wrongful act has ceased if
23 the Board decides that an underlying conflict still remains and
24 deciding the unfair labor practice would best effectuate the
25 policy of the act it administers. As to the first issue, I
26 determine that the Board of Personnel Appeals has the discretion
27 to hear an unfair labor practice charge alleging failure to
28 bargain in good faith after the parties involved have reached an
29 agreement and entered into a contract.

30 Having found that the Board has the discretion to hear the
31 matters involved, we come to the second issue of whether or not
32 the Board properly exercised that discretion. Having reviewed

1 the charges alleged in Petitioner's unfair labor practice com-
2 plaint, I cannot see how the Board can distingusih between the
3 four charges, such that two can be dismissed and two are not
4 dismissed. This is not to say that there cannot be a situation
5 that arises in which the Board may dismiss a portion of the
6 complaint as moot and hear the remainder of the complaint. But
7 in the fact situation before this Court, this Court cannot find
8 any basis for the dismissal of two of Petitioner's charges and
9 the retention of the other two charges.

10 ORDER

11 The Order issued by Respondent Board of Personnel Appeals,
12 dated December 20, 1978, is hereby vacated and set aside. This
13 matter is remanded back to Respondent Board of Personnel Appeals
14 with instructions to either reinstate counts II and IV of
15 Petitioner's Complaint or in the alternative dismiss all charges
16 in this matter as being moot.

17 Dated this 4 day of October, 1979.

18
19 **GORDON R. BENNETT**

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DISTRICT COURT JUDGE

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